

REFERENCE TITLE: homeowners' associations; arbitration

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1373

Introduced by
Senator Allen

AN ACT

AMENDING SECTION 33-1242, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1255.01; AMENDING SECTIONS 33-1256, 33-1803 AND 33-1807, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1242, Arizona Revised Statutes, is amended to
3 read:

4 33-1242. Powers of unit owners' association

5 Subject to the provisions of the declaration, the association may:

- 6 1. Adopt and amend bylaws and rules.
- 7 2. Adopt and amend budgets for revenues, expenditures and reserves and
8 collect assessments for common expenses from unit owners.
- 9 3. Hire and discharge managing agents and other employees, agents and
10 independent contractors.
- 11 4. Institute, defend or intervene in litigation or administrative
12 proceedings in its own name on behalf of itself or two or more unit owners on
13 matters affecting the condominium.
- 14 5. Make contracts and incur liabilities.
- 15 6. Regulate the use, maintenance, repair, replacement and modification
16 of common elements.
- 17 7. Cause additional improvements to be made as a part of the common
18 elements.
- 19 8. Acquire, hold, encumber and convey in its own name any right, title
20 or interest to real or personal property, except that common elements may be
21 conveyed or subjected to a security interest only pursuant to section
22 33-1252.
- 23 9. Grant easements, leases, licenses and concessions through or over
24 the common elements.
- 25 10. Impose and receive any payments, fees or charges for the use,
26 rental or operation of the common elements other than limited common elements
27 described in section 33-1212, paragraphs 2 and 4 and for services provided to
28 unit owners.
- 29 11. Impose charges for late payment of assessments and, after notice
30 and an opportunity to be heard, impose reasonable monetary penalties upon
31 unit owners for violations of the declaration, bylaws and rules of the
32 association AS PRESCRIBED IN SECTION 33-1255.01.
- 33 12. Impose reasonable charges for the preparation and recordation of
34 amendments to the declaration or statements of unpaid assessments.
- 35 13. Provide for the indemnification of its officers and executive board
36 of directors and maintain directors' and officers' liability insurance.
- 37 14. Assign its right to future income, including the right to receive
38 common expense assessments, but only to the extent the declaration expressly
39 provides.
- 40 15. Be a member of a master association or other entity owning,
41 maintaining or governing in any respect any portion of the common elements or
42 other property benefitting or related to the condominium or the unit owners
43 in any respect.
- 44 16. Exercise any other powers conferred by the declaration or bylaws.

1 17. Exercise all other powers that may be exercised in this state by
2 legal entities of the same type as the association.

3 18. Exercise any other powers necessary and proper for the governance
4 and operation of the association.

5 Sec. 2. Title 33, chapter 9, article 3, Arizona Revised Statutes, is
6 amended by adding section 33-1255.01, to read:

7 33-1255.01. Disputes regarding penalties or assessments;
8 hearing; binding arbitration

9 ON COMPLETION OF ANY HEARING REGARDING A PENALTY AS PRESCRIBED BY
10 SECTION 33-1242, PARAGRAPH 11, AND FOR ANY DISPUTE REGARDING THE AMOUNT OF
11 ASSESSMENTS, FINES, PENALTIES, LATE CHARGES, COLLECTION FEES OR ATTORNEY FEES
12 THAT MAY BE OWED PURSUANT TO SECTION 33-1256 OR THE CONDOMINIUM DOCUMENTS,
13 EITHER PARTY MAY PETITION TO HAVE THE DISPUTE RESOLVED BY BINDING ARBITRATION
14 AS FOLLOWS:

15 1. THE PARTY REQUESTING BINDING ARBITRATION SHALL PROVIDE WRITTEN
16 NOTICE OF THAT REQUEST TO THE OTHER PARTY WITHIN THIRTY DAYS AFTER RECEIPT OF
17 WRITTEN NOTICE OF THE HEARING PURSUANT TO SECTION 33-1242, PARAGRAPH 11 OR
18 RECEIPT OF WRITTEN NOTICE OF A DISPUTED ASSESSMENT, FINE, PENALTY, LATE
19 CHARGE, COLLECTION FEE OR ATTORNEY FEE CLAIMED TO BE OWED PURSUANT TO SECTION
20 33-1256 OR THE CONDOMINIUM DOCUMENTS.

21 2. A WRITTEN NOTICE OF REQUEST FOR BINDING ARBITRATION ACTS AS A STAY
22 ON ANY ACTION TO COLLECT OR ENFORCE THE COLLECTION OF MONIES CLAIMED TO BE
23 OWED.

24 3. ON RECEIPT OF A REQUEST FOR BINDING ARBITRATION, EITHER THE UNIT
25 OWNER AND THE BOARD OF DIRECTORS SHALL JOINTLY AGREE ON AN ARBITRATOR TO HEAR
26 THE DISPUTE OR, IF THE PARTIES ARE UNABLE TO AGREE WITHIN THIRTY DAYS OF
27 RECEIPT OF THE NOTICE OF REQUEST FOR BINDING ARBITRATION, EITHER OR BOTH OF
28 THE PARTIES MAY PETITION THE PRESIDING JUDGE OF THE SUPERIOR COURT OF THE
29 COUNTY IN WHICH THE CONDOMINIUM IS LOCATED. WITHIN FIFTEEN DAYS OF RECEIPT
30 OF THAT PETITION FOR BINDING ARBITRATION, THE SUPERIOR COURT SHALL NAME AN
31 ARBITRATOR OR ARBITRATION SERVICE TO ARBITRATE THE DISPUTE.

32 4. THE ARBITRATOR APPOINTED BY THE COURT OR SELECTED BY THE PARTIES
33 SHALL HEAR THE DISPUTE AND ISSUE A DETERMINATION WITHIN SIXTY DAYS AFTER THE
34 ARBITRATOR'S APPOINTMENT OR SELECTION. THE ARBITRATOR'S DECISION SHALL BE
35 LIMITED TO DETERMINING THE AMOUNT OF MONIES OWED, IF ANY, AND AN ORDER
36 REQUIRING PAYMENT, IF OWED, INCLUDING PAYMENT FOR ATTORNEY FEES AND COSTS FOR
37 THE ARBITRATION. THE ORDER OF THE ARBITRATOR MAY BE REDUCED TO AN ORDER FOR
38 A MONEY JUDGMENT, WHICH SHALL BE SIGNED BY THE PRESIDING JUDGE OF THE
39 SUPERIOR COURT AND ENTERED AS A JUDGMENT IN THE RECORDS OF THE COURT.

40 5. ON ENTRY OF A JUDGMENT FROM AN AWARD OF BINDING ARBITRATION, EITHER
41 PARTY MAY FILE AN APPEAL OF THE ACTION TO THE SUPERIOR COURT. THE ORDER
42 RESULTING FROM THE ARBITRATION SHALL BE UPHELD UNLESS THE COURT DETERMINES
43 THAT THE ORDER WAS ARBITRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION, AND THE
44 COURT SHALL AWARD THE PARTY PREVAILING ON APPEAL THE PARTY'S REASONABLE
45 ATTORNEY FEES AND COSTS.

Sec. 3. Section 33-1256, Arizona Revised Statutes, is amended to read:

33-1256. Lien for assessments: priority; mechanics' and materialmen's liens; applicability

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1242, paragraphs 10, 11 and 12, other than charges for late payment of assessments, are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1242, paragraphs 10, 11 and 12 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.

2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.

3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to ~~the provisions of~~ chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

1 E. Recording of the declaration constitutes record notice and
2 perfection of the lien for assessments, for charges for late payment of those
3 assessments, for reasonable collection fees and for reasonable attorney fees
4 and costs incurred with respect to those assessments. Further recordation of
5 any claim of lien for assessments under this section is not required.

6 F. A lien for unpaid assessments is extinguished unless proceedings to
7 enforce the lien are instituted within three years after the full amount of
8 the assessments becomes due.

9 G. This section does not prohibit actions to recover sums for which
10 subsection A of this section creates a lien or does not prohibit an
11 association from taking a deed in lieu of foreclosure.

12 H. A judgment or decree in any action brought under this section shall
13 include costs and reasonable attorney fees for the prevailing party.

14 I. The association on written request shall furnish to a lienholder,
15 escrow agent, unit owner or person designated by a unit owner a statement
16 setting forth the amount of unpaid assessments against the unit. The
17 statement shall be furnished within fifteen days after receipt of the request
18 and the statement is binding on the association, the board of directors and
19 every unit owner if the statement is requested by an escrow agency that is
20 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
21 the escrow agent within the time provided for in this subsection shall
22 extinguish any lien for any unpaid assessment then due.

23 J. The association shall record in the office of the county recorder
24 in the county in which the condominium is located a notice stating the name
25 of the association or designated agent or management company for the
26 association, the address for the association and the telephone number of the
27 association or its designated agent or management company. The notice shall
28 include the name of the condominium community, the date of the recording and
29 the recorded instrument number or book and page for the main document that
30 constitutes the declaration. If an association's address, designated agent
31 or management company changes, the association shall amend its notice or
32 record a new notice within ninety days after the change.

33 K. Notwithstanding any provision in the condominium documents or in
34 any contract between the association and a management company, unless the
35 member directs otherwise, all payments received on a member's account shall
36 be applied first to any unpaid assessments, for unpaid charges for late
37 payment of those assessments, for reasonable collection fees and for unpaid
38 attorney fees and costs incurred with respect to those assessments, in that
39 order, with any remaining amounts applied next to other unpaid fees, charges
40 and monetary penalties or interest and late charges on any of those amounts.

41 L. FOR ANY ACTION TO COLLECT AMOUNTS OWED PURSUANT TO THIS SECTION OR
42 THE CONDOMINIUM DOCUMENTS, EITHER PARTY MAY REQUEST BINDING ARBITRATION AS
43 PRESCRIBED IN SECTION 33-1255.01.

44 ~~L.~~ M. This section does not apply to timeshare plans or associations
45 that are subject to chapter 20 of this title.

1 Sec. 4. Section 33-1803, Arizona Revised Statutes, is amended to read:
2 33-1803. Penalties; assessments; disputes hearing; binding
3 arbitration

4 A. Unless limitations in the community documents would result in a
5 lower limit for the assessment, the association shall not impose a regular
6 assessment that is more than twenty per cent greater than the immediately
7 preceding fiscal year's assessment without the approval of the majority of
8 the members of the association. Unless reserved to the members of the
9 association, the board of directors may impose reasonable charges for the
10 late payment of assessments. A payment by a member is deemed late if it is
11 unpaid fifteen or more days after its due date, unless the community
12 documents provide for a longer period. Charges for the late payment of
13 assessments are limited to the greater of fifteen dollars or ten per cent of
14 the amount of the unpaid assessment. Any monies paid by the member for an
15 unpaid assessment shall be applied first to the principal amount unpaid and
16 then to the interest accrued.

17 B. After notice and an opportunity to be heard, the board of directors
18 may impose reasonable monetary penalties on members for violations of the
19 declaration, bylaws and rules of the association. Notwithstanding any
20 provision in the community documents, the board of directors shall not impose
21 a charge for a late payment of a penalty that exceeds the greater of fifteen
22 dollars or ten per cent of the amount of the unpaid penalty. A payment is
23 deemed late if it is unpaid fifteen or more days after its due date, unless
24 the declaration, bylaws or rules of the association provide for a longer
25 period. Any monies paid by a member for an unpaid penalty shall be applied
26 first to the principal amount unpaid and then to the interest accrued.
27 Notice pursuant to this subsection shall include information pertaining to
28 the manner in which the penalty shall be enforced.

29 C. ON COMPLETION OF ANY HEARING PURSUANT TO THIS SECTION REGARDING A
30 PENALTY AND FOR ANY DISPUTE REGARDING THE AMOUNT OF ASSESSMENTS, FINES,
31 PENALTIES, LATE CHARGES, COLLECTION FEES OR ATTORNEY FEES THAT MAY BE OWED
32 PURSUANT TO SECTION 33-1807 OR THE COMMUNITY DOCUMENTS, EITHER PARTY MAY
33 PETITION TO HAVE THE DISPUTE RESOLVED BY BINDING ARBITRATION AS FOLLOWS:

34 1. THE PARTY REQUESTING BINDING ARBITRATION SHALL PROVIDE WRITTEN
35 NOTICE OF THAT REQUEST TO THE OTHER PARTY WITHIN THIRTY DAYS AFTER RECEIPT OF
36 WRITTEN NOTICE OF THE HEARING PURSUANT TO SUBSECTION B OF THIS SECTION OR
37 RECEIPT OF WRITTEN NOTICE OF A DISPUTED ASSESSMENT, FINE, PENALTY, LATE
38 CHARGE, COLLECTION FEE OR ATTORNEY FEE CLAIMED TO BE OWED PURSUANT TO SECTION
39 33-1807 OR THE COMMUNITY DOCUMENTS.

40 2. A WRITTEN NOTICE OF REQUEST FOR BINDING ARBITRATION ACTS AS A STAY
41 ON ANY ACTION TO COLLECT OR ENFORCE THE COLLECTION OF MONIES CLAIMED TO BE
42 OWED.

43 3. ON RECEIPT OF A REQUEST FOR BINDING ARBITRATION, EITHER THE MEMBER
44 AND THE BOARD OF DIRECTORS SHALL JOINTLY AGREE ON AN ARBITRATOR TO HEAR THE
45 DISPUTE OR, IF THE PARTIES ARE UNABLE TO AGREE WITHIN THIRTY DAYS OF RECEIPT

1 OF THE NOTICE OF REQUEST FOR BINDING ARBITRATION, EITHER OR BOTH OF THE
2 PARTIES MAY PETITION THE PRESIDING JUDGE OF THE SUPERIOR COURT OF THE COUNTY
3 IN WHICH THE PLANNED COMMUNITY IS LOCATED. WITHIN FIFTEEN DAYS OF RECEIPT OF
4 THAT PETITION FOR BINDING ARBITRATION, THE SUPERIOR COURT SHALL NAME AN
5 ARBITRATOR OR ARBITRATION SERVICE TO ARBITRATE THE DISPUTE.

6 4. THE ARBITRATOR APPOINTED BY THE COURT OR SELECTED BY THE PARTIES
7 SHALL HEAR THE DISPUTE AND ISSUE A DETERMINATION WITHIN SIXTY DAYS AFTER THE
8 ARBITRATOR'S APPOINTMENT OR SELECTION. THE ARBITRATOR'S DECISION SHALL BE
9 LIMITED TO DETERMINING THE AMOUNT OF MONIES OWED, IF ANY, AND AN ORDER
10 REQUIRING PAYMENT, IF OWED, INCLUDING PAYMENT FOR ATTORNEY FEES AND COSTS FOR
11 THE ARBITRATION. THE ORDER OF THE ARBITRATOR MAY BE REDUCED TO AN ORDER FOR
12 A MONEY JUDGMENT, WHICH SHALL BE SIGNED BY THE PRESIDING JUDGE OF THE
13 SUPERIOR COURT AND ENTERED AS A JUDGMENT IN THE RECORDS OF THE COURT.

14 5. ON ENTRY OF A JUDGMENT FROM AN AWARD OF BINDING ARBITRATION, EITHER
15 PARTY MAY FILE AN APPEAL OF THE ACTION TO THE SUPERIOR COURT. THE ORDER
16 RESULTING FROM THE ARBITRATION SHALL BE UPHELD UNLESS THE COURT DETERMINES
17 THAT THE ORDER WAS ARBITRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION, AND THE
18 COURT SHALL AWARD THE PARTY PREVAILING ON APPEAL THE PARTY'S REASONABLE
19 ATTORNEY FEES AND COSTS.

20 Sec. 5. Section 33-1807, Arizona Revised Statutes, is amended to read:

21 33-1807. Lien for assessments; priority; mechanics' and
22 materialmen's liens

23 A. The association has a lien on a unit for any assessment levied
24 against that unit from the time the assessment becomes due. The
25 association's lien for assessments, for charges for late payment of those
26 assessments, for reasonable collection fees and for reasonable attorney fees
27 and costs incurred with respect to those assessments may be foreclosed in the
28 same manner as a mortgage on real estate. Fees, charges, late charges,
29 monetary penalties and interest charged pursuant to section 33-1803, other
30 than charges for late payment of assessments, are not enforceable as
31 assessments under this section. If an assessment is payable in installments,
32 the full amount of the assessment is a lien from the time the first
33 installment of the assessment becomes due. The association has a lien for
34 fees, charges, late charges, other than charges for late payment of
35 assessments, monetary penalties or interest charged pursuant to section
36 33-1803 after the entry of a judgment in a civil suit for those fees,
37 charges, late charges, monetary penalties or interest from a court of
38 competent jurisdiction and the recording of that judgment in the office of
39 the county recorder as otherwise provided by law. The association's lien for
40 monies other than for assessments, for charges for late payment of those
41 assessments, for reasonable collection fees and for reasonable attorney fees
42 and costs incurred with respect to those assessments may not be foreclosed
43 and is effective only on conveyance of any interest in the real property.

1 B. A lien for assessments, for charges for late payment of those
2 assessments, for reasonable collection fees and for reasonable attorney fees
3 and costs incurred with respect to those assessments under this section is
4 prior to all other liens, interests and encumbrances on a unit except:

5 1. Liens and encumbrances recorded before the recordation of the
6 declaration.

7 2. A recorded first mortgage on the unit, a seller's interest in a
8 first contract for sale pursuant to chapter 6, article 3 of this title on the
9 unit recorded prior to the lien arising pursuant to subsection A of this
10 section or a recorded first deed of trust on the unit.

11 3. Liens for real estate taxes and other governmental assessments or
12 charges against the unit.

13 C. Subsection B of this section does not affect the priority of
14 mechanics' or materialmen's liens or the priority of liens for other
15 assessments made by the association. The lien under this section is not
16 subject to chapter 8 of this title.

17 D. Unless the declaration otherwise provides, if two or more
18 associations have liens for assessments created at any time on the same real
19 estate those liens have equal priority.

20 E. Recording of the declaration constitutes record notice and
21 perfection of the lien for assessments, for charges for late payment of
22 assessments, for reasonable collection fees and for reasonable attorney fees
23 and costs incurred with respect to those assessments. Further recordation of
24 any claim of lien for assessments under this section is not required.

25 F. A lien for an unpaid assessment is extinguished unless proceedings
26 to enforce the lien are instituted within three years after the full amount
27 of the assessment becomes due.

28 G. This section does not prohibit:

29 1. Actions to recover amounts for which subsection A of this section
30 creates a lien.

31 2. An association from taking a deed in lieu of foreclosure.

32 H. A judgment or decree in any action brought under this section shall
33 include costs and reasonable attorney fees for the prevailing party.

34 I. On written request, the association shall furnish to a lienholder,
35 escrow agent, unit owner or person designated by a unit owner a statement
36 setting forth the amount of any unpaid assessment against the unit. The
37 association shall furnish the statement within fifteen days after receipt of
38 the request, and the statement is binding on the association, the board of
39 directors and every unit owner if the statement is requested by an escrow
40 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
41 the statement to the escrow agent within the time provided for in this
42 subsection shall extinguish any lien for any unpaid assessment then due.

43 J. The association shall record in the office of the county recorder
44 in the county in which the planned community is located a notice stating the
45 name of the association or designated agent or management company for the

1 association, the address for the association and the telephone number of the
2 association or its designated agent or management company. The notice shall
3 include the name of the planned community, the date of the recording and the
4 recorded instrument number or book and page for the main document that
5 constitutes the declaration. If an association's address, designated agent
6 or management company changes, the association shall amend its notice or
7 record a new notice within ninety days after the change.

8 K. Notwithstanding any provision in the community documents or in any
9 contract between the association and a management company, unless the member
10 directs otherwise, all payments received on a member's account shall be
11 applied first to any unpaid assessments, for unpaid charges for late payment
12 of those assessments, for reasonable collection fees and for unpaid attorney
13 fees and costs incurred with respect to those assessments, in that order,
14 with any remaining amounts applied next to other unpaid fees, charges and
15 monetary penalties or interest and late charges on any of those amounts.

16 L. FOR ANY ACTION TO COLLECT AMOUNTS OWED PURSUANT TO THIS SECTION OR
17 THE COMMUNITY DOCUMENTS, EITHER PARTY MAY REQUEST BINDING ARBITRATION AS
18 PRESCRIBED IN SECTION 33-1803.